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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HOSIE KENNETH FRAZIER,

Plaintiff,

v.

PAULA DAVIS, *et al.*,

Defendants.

Case No.: 3:19-cv-00050-MMD-WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and *pro se* complaint (ECF No. 1-1).

**I. IFP APPLICATION**

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The

1 application must be made on the form provided by the court and must include a financial affidavit  
2 disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some  
4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)  
5 (quotation marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the  
6 benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;  
8 therefore, the application should be granted.

## 9 **II. SCREENING**

### 10 **A. Standard**

11 "[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
12 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
13 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant  
14 who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

15 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
16 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks  
17 that language. As such, when reviewing the adequacy of a complaint under this statute, the court  
18 applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d  
19 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a plaintiff has failed to state a  
20 claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule  
21 of Civil Procedure 12(b)(6) standard for failure to state a claim."). Review under Rule 12(b)(6) is  
22 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723  
23 (9th Cir. 2000) (citation omitted).

1 The court must accept as true the allegations, construe the pleadings in the light most  
2 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395  
3 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less stringent  
4 standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9 (1980)  
5 (internal quotation marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause of  
7 action," it must contain factual allegations sufficient to "raise a right to relief above the speculative  
8 level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading must contain  
9 something more ... than ... a statement of facts that merely creates a suspicion [of] a legally  
10 cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a plaintiff  
11 should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570; *see*  
12 *also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of the  
14 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
16 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

## 17 **B. Plaintiff's Complaint**

18 Plaintiff's complaint is brought under 42 U.S.C. § 1983 and names Paula Davis (NSA  
19 Assistant Director), Paula Davis Marshall (NSA Assistant Director), Ernest Arron Frazier, James  
20 Wells, Gale Davis, and Larry Davis (described as a CIA agent). Plaintiff's complaint contains a  
21 stream-of-consciousness type narrative discussing a lawsuit won by his family against the  
22 government and Standard Oil which resulted in his family members turning against each other and  
23 trying to kill one another. He then mentions grand larceny and his identification being stolen at the

1 Silver Legacy Casino, and being given to someone to cash checks. Plaintiff then states that his  
2 brother James Wells stole his name and used it in Susanville where he was “busted” for drugs and  
3 apparently authorities thought Wells was Plaintiff. Plaintiff’s complaint then includes blank pages  
4 asserting counts for stealing court filings, stalking, placing transmitters in his ear and harassing  
5 him, as well as stealing of his clothing and personal items.

6       The court cannot discern any plausible claim for relief in Plaintiff’s complaint. As the  
7 Supreme Court has noted, “a litigant whose filing fees and court costs are assumed by the public,  
8 unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or  
9 repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “To prevent such abusive or  
10 captious litigation, § 1915(d) [now § 1915(e)(2)(B)(i)] authorizes federal courts to dismiss a claim  
11 filed [IFP] ‘if the allegation of poverty is untrue, or if satisfied that the action is frivolous or  
12 malicious.’” *Id.* “Dismissals on these grounds are often made *sua sponte* prior to the issuance of  
13 process, so as to spare prospective defendants the inconvenience and expense of answering such  
14 complaints.” *Id.* (citation omitted). A complaint is frivolous “where it lacks an arguable basis either  
15 in law or in fact.” *Id.* This term “embraces not only the inarguable legal conclusion, but also the  
16 fanciful factual allegation.” *Id.* Section 1915(e)(2)(B)(i) “accords judges not only the authority to  
17 dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to  
18 pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual  
19 contentions are clearly baseless.” *Id.* at 327. This includes “claims of infringement of a legal  
20 interest which clearly does not exist” and “claims describing fantastic or delusional scenarios.” *Id.*  
21 at 327-28.

22       Here, the court cannot discern an arguable basis in fact or law for Plaintiff’s allegations.  
23 Therefore, this action should be dismissed with prejudice as frivolous.

**III. RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the District Judge enter an order:

(1) **GRANTING** Plaintiff's IFP application (ECF No. 1). Plaintiff is permitted to maintain this action without prepaying the filing fee or giving security therefor. This order granting IFP status does not extend to the issuance of subpoenas at government expense.

(2) The complaint (ECF No. 1-1) should be **FILED**.

(3) The action should be **DISMISSED WITH PREJUDICE** as frivolous.

The Plaintiff should be aware of the following:

1. That [s]he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

Dated: February 20, 2019.



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William G. Cobb  
United States Magistrate Judge